

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MICHAEL J. BYNUM and CANADA  
HOCKEY LLC d/b/a EPIC SPORTS,

*Plaintiffs*

v.

TEXAS A&M UNIVERSITY  
ATHLETIC DEPARTMENT *et al.*,

*Defendants.*

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CIVIL ACTION NO. 4:17-CV-181

JURY TRIAL DEMANDED

**JOINT MOTION TO ABATE SCHEDULING ORDER**

Plaintiffs Michael J. Bynum and Canada Hockey LLC d/b/a Epic Sports, and Defendants Texas A&M University Athletic Department, Brad Marquardt, Alan Cannon, and Lane Stephenson (the “University Defendants”) and Texas A&M University 12th Man Foundation file this joint motion to abate the Court’s scheduling order (Dkt. No. 39) pending resolution of the threshold matters raised in Defendants’ motions to dismiss. Because good cause exists to abate the current deadlines, the parties respectfully request the Court to grant this motion.

**DISCUSSION**

This copyright case concerns claims for willful copyright infringement, violations of the Digital Millennium Copyright Act (“DMCA”), and unconstitutional takings of property. There are currently two motions to dismiss pending before the Court.<sup>1</sup> These motions have been thoroughly briefed by the parties.<sup>2</sup> But to date, the dismissal motions have not been decided.

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<sup>1</sup> See Motion to Dismiss for Failure to State a Claim, May 17, 2017 (Dkt. No. 33); Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim, May 17, 2017 (Dkt. No. 34).

<sup>2</sup> See Response in Opposition to Motion to Dismiss for Failure to State a Claim, June 16, 2017 (Dkt. No. 40); Reply in Support of Motion to Dismiss for Failure to State a Claim, June 30, 2018 (Dkt. No. 43); Supplemental and Amended Response in Opposition to Defendants’ Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim, Jan. 16, 2018 (Dkt. No. 62); Reply in Support of Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim, Mar. 22, 2018 (Dkt. No. 77). Plaintiffs anticipate filing a brief surreply on the jurisdictional issues.

The parties agreed to conduct limited discovery on jurisdictional issues raised in the University Defendants' motion to dismiss, and this Court ultimately compelled the production of certain documents in this regard.<sup>3</sup> Other than jurisdictional discovery, however, no other discovery has occurred.

Certain case deadlines are rapidly approaching, including Plaintiffs' expert reports on May 3, 2018; Defendants' expert reports on July 10, 2018; and the discovery cutoff on September 19, 2018.<sup>4</sup> This joint motion asks the Court to abate the current scheduling order until the pending dismissal motions are decided, and allow the parties to submit a proposed amended scheduling order for the Court's consideration at that time.

A scheduling order "may be modified only for good cause and with the judge's consent." FED. R. CIV. P. 16(b)(4). Good cause exists because allowing the Court to rule on the threshold issues raised in Defendants' motions to dismiss before engaging in further discovery will assist the parties and the Court in managing the case. The parties have not yet retained expert witnesses, and may be able to avoid and/or limit the expense associated with particular areas of expert testimony depending on how the Court rules on the pending motions to dismiss. No party objects to the abatement of the current scheduling order pending a ruling on these motions.

In sum, good cause exists to abate the current scheduling order until the pending motions to dismiss are ruled upon, and the Court should therefore grant this motion and permit the parties and the Court to revisit the appropriate deadlines for this case at that time.

### CONCLUSION

For the reasons set forth herein, Plaintiffs Michael J. Bynum and Canada Hockey LLC d/b/a Epic Sports, and Defendants Texas A&M University Athletic Department, Brad Marquardt,

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<sup>3</sup> See Motion to Compel Jurisdictional Discovery, Aug. 4, 2017 (Dkt. No. 46), ¶ 3; Order Granting in Part and Denying in Part Motion to Compel Jurisdictional Discovery, Oct. 23, 2017 (Dkt. No. 52).

<sup>4</sup> See Scheduling Order, June 6, 2017 (Dkt. No. 39), ¶¶ 2–4.

Alan Cannon, Lane Stephenson, and Texas A&M University 12th Man Foundation respectfully request the Court to grant their joint motion to abate the scheduling order (Dkt. No. 39).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record via the Court's CM/ECF system and/or by certified mail, return receipt requested, on this 16th day of April, 2018.

/s/ Nicholas Dickerson

Nicholas P. Dickerson